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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,510	02/27/2004	Muhammad Chishti	018563-004920US	7442
46718	7590	01/22/2007	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP (018563) TWO EMBARCADERO CENTER, EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			WILSON, JOHN J	
		ART UNIT	PAPER NUMBER	
		3732		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/22/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/788,510	CHISHTI ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 December 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 2-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 25 is/are allowed.

6)  Claim(s) 2-20 is/are rejected.

7)  Claim(s) 21-24 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 and 8-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Truax (CLASP-LESS™ Appliance System). Truax shows modeling, page 22, column 3, lines 7-9, and generating three appliances having different geometries (thickness), page 22, column 3, lines 9-15, before a stage of treatment. With respect to claim 2, it is noted that the three predetermined positions are not limited to different predetermined positions and that the successive arrangements are not tied to the positions, as such, to model the desired position of Truax three or more times is merely and obvious matter of choice in the duplication of a known method step to one of ordinary skill in the art. As to claim 3, it is noted that the claims is not limited to the molds of casts having different predetermined teeth positions and that the successive arrangements are not tied to the molds or casts, as such, to use three or more molds or casts would be an obvious matter of choice in the duplication of the shown step of Truax to one of ordinary skill in the art. Modeling ideal and finished positions are well known modeling steps. Using moveable models and restraints are well known modeling steps. Avoiding undesirable contact is an obvious modeling step to the skilled artisan.

Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Truax (CLASP-LESS™ Appliance System) in view of Duret et al (4611288). Truax does not show using data from X-rays. Duret teaches using X-ray data to obtain dynamic occlusion, column 14, lines 25-33. It would be obvious to one of ordinary skill in the art to modify Truax to include using X-ray data to model occlusion as shown by Duret in order to make use of known ways to better model teeth. As to claim 20, Duret shows using a computer to obtain updated data on a patient.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Truax (CLASP-LESS™ Appliance System) in view of Andreiko et al (5683243). Truax does not show using data from tomography. Andreiko teaches using tomography data to model teeth, column 5, lines 15-17. It would be obvious to one of ordinary skill in the art to modify Truax to include using tomography data to model occlusion as shown by Andreiko in order to make use of known ways to better model teeth.

#### ***Allowable Subject Matter***

Claim 25 is allowed.

Claims 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

If in claim 2, line 4, before "predetermined", - different – is inserted, then this claim would be allowable over the prior art.

The declaration under 37 CFR 1.132 filed December 19, 2006 is insufficient to overcome the rejection of claims 2-20 based upon Martz as set forth in the last Office action because: The newly applied art Truax shows modeling and generating three devices proactively.

***Response to Arguments***

Applicant's arguments filed December 19, 2006 have been fully considered but they are not persuasive. Applicant's remarks are held to be responded to in the above newly applied art and rejections and in the indication of allowable subject matter.

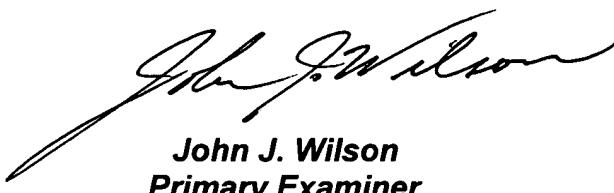
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez, can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



*John J. Wilson*

**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
January 11, 2007